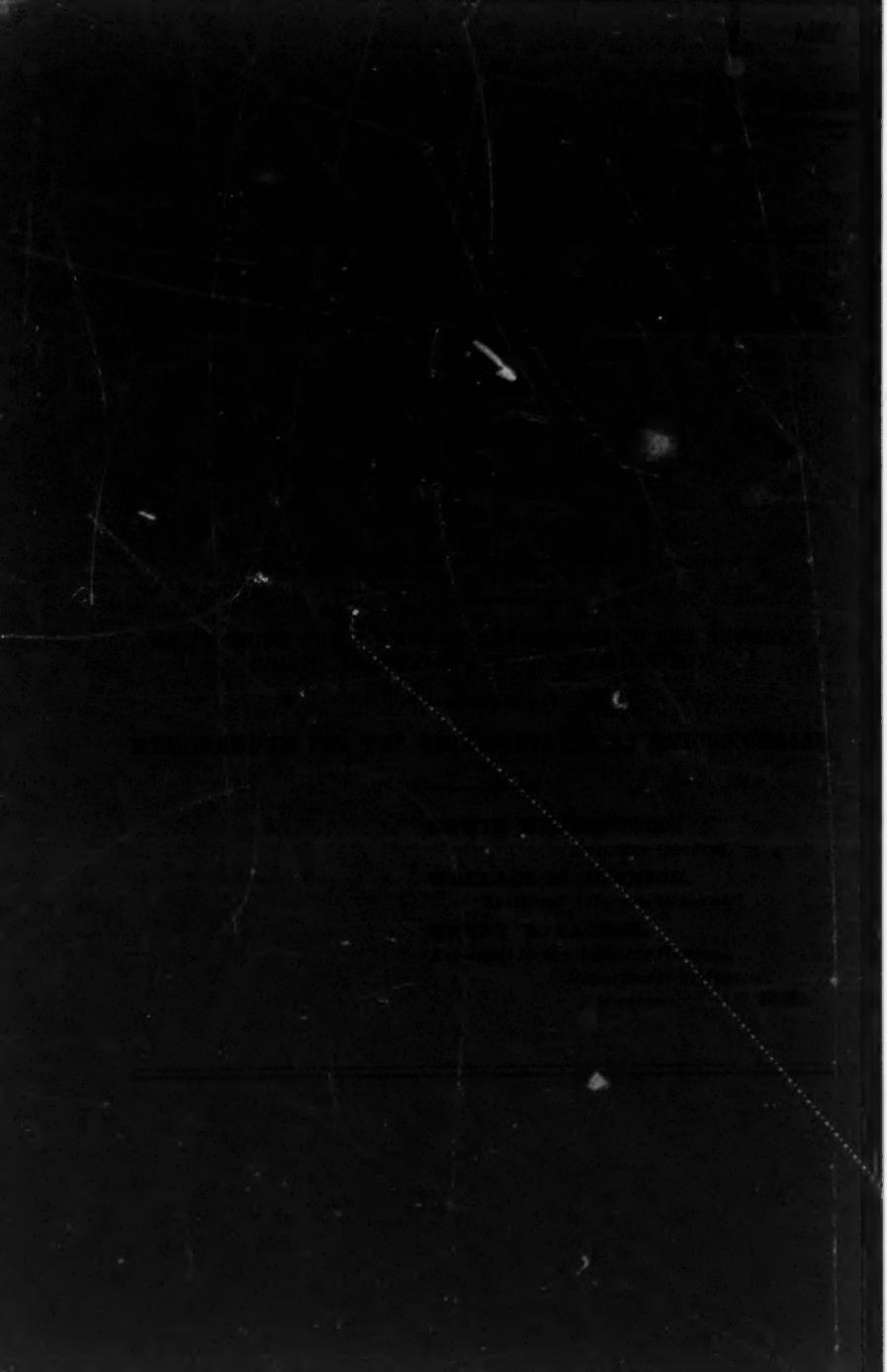

In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-552

ROBERT SATIACUM, PETITIONER

v.

STATE OF WASHINGTON

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

This memorandum is submitted in response to the Court's order of January 8, 1973, inviting the Solicitor General to express the views of the United States in this case.

1. Petitioner, Robert Satiacum, is an enrolled member of the Puyallup Indian Tribe. The Puyallup Tribe is one of the tribes which was a party to the Treaty of Medicine Creek signed on December 26, 1854, and ratified by the Senate on March 3, 1855. 10 Stat. 1132-1137. See *Puyallup Tribe* v. *Department of Game,* 391 U.S. 392. The treaty, in return for the Tribe's relinquishment of large areas of land (Article I), provided a Reservation for the Tribe (Article II)

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which was subsequently defined and enlarged by executive order of President Pierce issued January 20, 1857, and of President Grant issued September 6, 1873. The treaty gave the Tribe exclusive use of the Reservation, and also gave the Tribe the right "of taking fish, at all usual and accustomed grounds and stations * * * [outside the Reservation] in common with all citizens of the Territory" (Article III). In *Puyallup Tribe* v. *Department of Game, supra,* this Court interpreted that language as allowing state regulation of off-reservation fishing if the regulation is necessary for the conservation of fish. State fishing regulations generally do not apply to on-reservation fishing (compare *McClanahan* v. *Arizona Tax Commission,* No. 71–834, decided March 27, 1973; *Williams* v. *Lee,* 358 U.S. 217).

The Puyallup Tribe continues to exist and is one of the tribes which adopted a constitution and bylaws under the Indian Reorganization Act of 1934, 48 Stat. 984. Though most of the land within the Reservation has been allotted, freed from restriction and disposed of, some tribal land remains and, significantly, the Tribe has never disposed of the bed of the Puyallup River or their fishing rights. Congress has never terminated the Reservation and the Department of the Interior recognizes the continued existence of the Reservation and the Tribe.

2. Petitioner, while in a boat well into Commencement Bay, and thus neither in the Puyallup River nor within the limits of the Puyallup Reservation (Tr. 9,

78, 81, 122, 126),[1] was arrested by Washington State authorities and charged with (1) possessing salmon taken from a salmon preserve for commercial purposes, (2) unlawful waste or destruction of food fish, and (3) unlawfully carrying a firearm. At trial, petitioner moved to dismiss all three charges for lack of jurisdiction, alleging that the offenses were committed while petitioner "was fishing at his 'usual and accustomed' fishing stations under the Treaty of Medicine Creek" (Tr. 141, 164). The court dismissed the charge of unlawfully carrying a firearm after determining that petitioner had a license to carry the gun and had not used the gun in an unlawful manner (Tr. 101). The court also dismissed the charge of possessing salmon taken from a salmon preserve on the premise that petitioner is a treaty-protected Indian who was fishing off reservation at usual fishing places (see Tr. 137–140) and on the ground that "nobody could know whether the regulation was reasonable or necessary" and that "A regulation is necessary but not total prohibition" (Tr. 139–140).

The court refused to dismiss the charge of wasting fish on the ground that Indians have no right to waste fish (Tr. 141). That charge, therefore, went to the jury. The testimony showed that when the game wardens approached petitioner's boat he threw overboard three salmon that he had previously caught and

[1] Tr. refers to the transcript of the proceedings of the trial court (labeled "Statement of Facts"). We are lodging a copy of the transcript with the Clerk.

34 Stat. 325, 377; Act of March 1, 1907, c. 2285, 34 Stat. 1015, 1050; Act of June 30, 1919, c. 4, 41 Stat. 3, 27. And the United States and the State of Washington continue to recognize a distinct Puyallup Indian community, as the Washington Supreme Court itself explicitly found in *Department of Game* v. *Puyallup Tribe,* 70 Wash. 2d 245, 252, 422 P.2d 754, 758:

> We are satisfied that so long as the United States government, through its appropriate agencies, continues to recognize the existence of the Puyallup Tribe of Indians and its tribal roll, as they clearly do, the Superior Court for Pierce County acted without jurisdiction in making a judicial determination of the tribe's termination.
>
> Historically and uniformally the termination of federal supervision of an Indian tribe has been accomplished by the Congress through enactment of legislation.* * *

The above language was specifically reaffirmed by the Washington Supreme Court in *Department of Game* v. *Puyallup Tribe, Inc.,* 80 Wash. 2d 561, 497 P.2d 171, 174, decided subsequent to the instant case.

Moreover, regardless of changes in the status of the land, title to the river and to fishing rights would not be lost unless specifically taken or relinquished. *Menominee Tribe* v. *United States,* 391 U.S. 404; *Choctaw Nation* v. *Oklahoma,* 397 U.S. 620.

5. We agree with the State of Washington that the present case is not a proper one for determining the continued existence of the Puyallup Reservation

or residual on-reservation fishing rights of the Puyallup Tribe, because of the inadequacy of the record below. We disagree, however, with the State's suggestion that these issues could be decided in *Puyallup Tribe* v. *Department of Game*, 72–746, certiorari granted March 19, 1973. That case is concerned solely with off-reservation fishing rights and presents no issue concerning the existence of the Reservation.

In order to enable the latter question to be determined on the basis of a proper factual record, the United States has brought a suit in the United States District Court for the Western District of Washington, to enjoin the enforcement of state fishing laws within the Reservation. On January 29, 1973, that court decided the case adversely to the United States on the ground that the Reservation no longer exists. *United States* v. *The State of Washington*, No. 39–71C3. An appeal from that decision by the United States is now pending in the court of appeals.

6. In our view petitioner was, on this record, properly convicted of unlawful waste or destruction of food fish outside the Reservation. However, because the court below, in affirming the conviction, apparently did not decide whether the record supported the conviction on that ground and instead held that the Reservation no longer exists (on the basis of a record wholly inadequate for determination of that federal question), we believe this Court should grant the petition for a writ of certiorari, vacate the judgment of the Washington Supreme Court and remand the

case to that court for a determination of whether it would affirm the conviction regardless of whether the Reservation still exists.

Respectfully submitted.

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MAY 1973.

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